

UNITED STATES DISTRICT COURT.  
FOR THE EASTERN DISTRICT OF VIRGINIA  
ALEXANDRIA DIVISION

UNITED STATES OF AMERICA . Criminal No. 1:16cr265  
. .  
vs. . Alexandria, Virginia  
. February 23, 2018  
NICHOLAS YOUNG, . 9:30 a.m.  
. .  
Defendant. .  
. . . . .

TRANSCRIPT OF SENTENCING  
BEFORE THE HONORABLE LEONIE M. BRINKEMA  
UNITED STATES DISTRICT JUDGE

APPEARANCES:

FOR THE GOVERNMENT: JOHN T. GIBBS, AUSA  
GORDON D. KROMBERG, AUSA  
EVAN N. TURGEON, SAUSA  
United States Attorney's Office  
2100 Jamieson Avenue  
Alexandria, VA 22314

FOR THE DEFENDANT: NICHOLAS D. SMITH, ESQ.  
David B. Smith, PLLC  
108 North Alfred Street  
Alexandria, VA 22314  
and  
LINDA MORENO, ESQ.  
Linda Moreno P.A.  
511 Avenue of the Americas  
No. 2  
New York, NY 10011

ALSO PRESENT: SA NICHOLAS CASLEN

OFFICIAL COURT REPORTER: ANNELIESE J. THOMSON, RDR, CRR  
U.S. District Court, Fifth Floor  
401 Courthouse Square  
Alexandria, VA 22314  
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COMPUTERIZED TRANSCRIPTION OF STENOGRAPHIC NOTES

# 1 | PROCEEDINGS

2 (Defendant present.)

3 THE CLERK: Criminal Case 16-265, United States of  
4 America v. Nicholas Young. Will counsel please note their  
5 appearances for the record.

6 MR. KROMBERG: Good morning, Your Honor. Gordon  
7 Kromberg, John Gibbs, and Evan Turgeon for the United States.  
8 With us at counsel table is FBI Special Agent Nicholas Caslen.

9 THE COURT: Good morning.

10 MR. SMITH: Good morning, Your Honor. Nicholas Smith  
11 for defendant Nicholas Young, and with me is Ms. Linda Moreno.

12 MS. MORENO: Good morning.

13 THE COURT: Good morning.

14 All right, this matter comes on first of all, we have  
15 two pending motions from the defense: defendant's motion for a  
16 new trial and defendant's motion for acquittal on Counts 2 and  
17 4. Both parties have extensively briefed these motions, and I  
18 don't need to hear a whole lot of argument.

19 Mr. Smith or Ms. Moreno, who's going to argue the  
20 defense motions?

21 MS. MORENO: Mr. Smith, Your Honor.

THE COURT: All right. Mr. Smith, is there anything you want to add to your motion for a new trial?

24 MR. SMITH: No.

THE COURT: All right. Basically, you've argued in

1 that motion that the case should go for a new trial because  
2 your client suffered undue prejudice from the evidence that was  
3 introduced, including the evidence about his involvement with  
4 white supremacists and Nazi groups, any relationship that that  
5 might have to radical Islam; that the Court made errors in  
6 admitting hearsay evidence; that your client was prejudiced by  
7 pretrial publicity; and the fact that the Court did not allow a  
8 jury questionnaire; and that various evidence was kept out that  
9 you felt would help your client.

10           The government has, obviously, filed an objection to  
11 that motion, and I'm fully satisfied that there's nothing  
12 raised in your motion that would justify a new trial. You  
13 know, we addressed many of these issues before the case itself.  
14 In terms of the pretrial publicity, as the government properly  
15 points out, some of that was at your own doing because of the  
16 extensive interviews that the defendant was engaged in.

17           There's no requirement for a jury questionnaire, and  
18 I do point out, and I think this is a significant fact, that  
19 the Court gave the defense an additional peremptory, so you had  
20 11 peremptory strikes, and you only used six of them, so the  
21 jury pool itself was found to be unobjectionable based on the  
22 record in this case. So I don't find there's any basis to  
23 grant a new trial, and the motion is denied.

24           In terms of the motion for a judgment of acquittal on  
25 Counts 2 and 4, you raise an interesting legal argument, and I

1 don't dispute that there's case law especially in the Ninth  
2 Circuit that supports your argument that an FBI investigation  
3 does not qualify as an official proceeding for purposes of a  
4 1512(c)(2) prosecution.

5 First of all, this case is not covered by *Amri*,  
6 because *Amri* involved a different portion of the obstruction  
7 statute, but in looking at the language of 1512, including the  
8 language in subsection (f)(1) which talks about the fact that  
9 an official proceeding does not have to actually be pending at  
10 the time, the government, I think, has correctly argued,  
11 although I think one can debate the issue, but has correctly  
12 argued that there was sufficient evidence from which a  
13 reasonable jury could draw the conclusion that the defendant  
14 would have known that a grand jury investigation was either  
15 ongoing or anticipated to be ongoing, and therefore, I'm  
16 satisfied again that the motion for judgment of acquittal on  
17 Counts 2 and 4 should be denied.

18 So your motions are denied, and we'll proceed to  
19 sentencing.

20 MR. SMITH: Thank you, Your Honor.

21 THE COURT: Wait. While you're there, who's going to  
22 handle the sentencing?

23 MR. SMITH: Ms. Moreno.

24 THE COURT: All right. Ms. Moreno, come on up to the  
25 lectern. Have you had enough time yourself to go over the

1 pre-sentence report and to go over it thoroughly with  
2 Mr. Young?

3 MS. MORENO: Your Honor, with respect to specific  
4 questions about the PSR, I think Mr. Smith handled that with,  
5 with our client, so if there are specific questions about the  
6 PSR --

7 THE COURT: Well, in terms of all the objections that  
8 were made to the pre-sentence report, which the probation  
9 officer at the end of the report, of course, listed and then  
10 explained why they were not being granted or -- I've looked at  
11 all of those, and the argument that evidence is in the  
12 pre-sentence report that might not have come in at trial is  
13 really not appropriate.

14 In fact, in your sentencing memo, you point to  
15 section 3661 of Title 18, which says there's no limitation on  
16 the information, background, character, or conduct of the  
17 defendant. So the Probation Office not only has to help inform  
18 the Court as to the basis for a sentencing decision, but also,  
19 as you know, those pre-sentence reports inform the Bureau of  
20 Prisons in terms of making an appropriate judgment call as to  
21 the best way to incarcerate an individual.

22 And so all of -- to the extent that those objections  
23 are based upon, well, this wasn't evidence that may have come  
24 up at trial, even if that were the case, I'm satisfied that  
25 those were proper matters to have in the pre-sentence report,

1 so those various objections are denied -- or overruled, all  
2 right?

3 So the Probation Office calculated the offense level  
4 here as a level 42. The -- because of the nature of the  
5 offenses, that bumps the criminal history, and I think this is  
6 one of those artificial things in the guidelines, all right?

7 So I don't mind telling you that, but your client, who  
8 otherwise would have a criminal history I, gets a criminal  
9 history VI, and that then makes the guideline range 360 to 720  
10 months, even though the mandatory max -- statutory max for each  
11 offense, I believe, is 20 years.

12 The fine range is \$50,000 to \$250,000. There are  
13 three counts of conviction, so there's \$300 of special  
14 assessments. And those are the guidelines we have to work  
15 with, all right?

16 I have read all the letters, including Mr. Young's  
17 letter, so I want to make sure you know that, but let me hear  
18 then first from the United States as to its position on  
19 sentencing.

20 MR. KROMBERG: Thank you, Your Honor. The first  
21 point I'd like to make is that what happened in July 2016 was  
22 not an aberration. It wasn't something -- it was not an  
23 isolated example. It wasn't something that was out of  
24 character for the defendant because you've got to -- before you  
25 even think about what the appropriate punishment is for what

1 happened in July 2016, so in December 2015, that obstruction of  
2 justice, that was designed to protect what Mr. Young believed  
3 to be an ISIS fighter.

4 In that sense, it was nothing like the *Amri* and *Queen*  
5 case because Amri and Queen didn't think that Qamar at the time  
6 was a threat, was doing anything wrong, but in December of  
7 2015, Mr. Young, a police officer, knew or believed that Mo was  
8 an ISIS fighter, and he lied to the FBI about it. He tried to  
9 lie to the FBI about it, tried to mislead the FBI about it.

10 And then a year before that, November 2014, when he  
11 obstructed justice then by sending that ruse text message, that  
12 wasn't to protect Mo, so that was something different. That  
13 November 2014 text message was designed to deceive the FBI  
14 about Mr. Young himself.

15 And then in February 2012, when the FBI was  
16 investigating the *Amine El Khalifi* case, Khalifi was the guy  
17 who wore a suicide vest, he was going to blow himself up in the  
18 U.S. Capitol, you heard Khalil testify that, well, yeah, we  
19 were sitting at dinner, and we were talking about Khalifi being  
20 arrested, and Mr. Young told me that, you know, the FBI is  
21 going to come talk to you because they came and talked to me  
22 after Chesser was arrested, and they're going to ask you  
23 questions. Don't answer all their questions.

24 And here's a police officer telling someone not to  
25 answer the FBI's questions about someone who was trying to blow

1 himself up in the U.S. Capitol Building.

2                   So that's -- I think it's important to keep in mind  
3 that nearly four years -- four years? -- more than four years  
4 before the events that led to the, the material support case  
5 came up, the police officer is telling someone not to tell the  
6 FBI anything -- or not to tell the FBI certain facts about an  
7 investigation of an al Qaeda plot to bomb the U.S. Capitol.

8                   The second thing I wanted to make sure that I can try  
9 to get the Court to focus on is that the \$245 of gift cards is  
10 not -- I mean, it's a small amount in relative -- in absolute  
11 terms, obviously, but ISIS didn't need the \$245. What they  
12 needed was the gift card codes.

13                  You might -- the Court probably recalls that in the  
14 *Haris Qamar* case, Qamar had to be implored to send anything,  
15 and Qamar sent something like \$40 of his own money and \$40 of  
16 the CHS's money to buy \$80 worth of gift card codes.

17                  When Mo in this case asked for the gift card codes,  
18 he didn't say any amount in particular. He said, "We need gift  
19 cards," and Mr. Young immediately went and got seventeen \$10  
20 gift cards and five \$15 gift cards and sent them off.

21                  He wasn't -- he didn't say, "This is all I'm going to  
22 do. I'm not going to do anything else." He wasn't asked to do  
23 anything else. He sent those cards, and that was it. But  
24 those \$245 worth of gift cards were going to be used for  
25 Threema accounts to communicate with fighters who were going to

1 come to join ISIS, and as Mr. Young knew from buying his own  
2 Threema account, the Threema account only costs \$3.

3 We talked in the sentencing pleading about the  
4 difference between Mr. Qamar and Mr. Young. Mr. Qamar was, I  
5 think, the last somewhat similar case that the Court has  
6 handled, and Qamar, as scary as he sounded online, he was an  
7 immature guy living with his parents who when offered the  
8 chance by the informant to go join ISIS, he said, "No, I'm not  
9 going to go."

10 And he did -- he went and -- and he went and took the  
11 photographs that were going to be used for video, which was a  
12 really bad thing, but he was -- I think the Court saw him as  
13 living in a video game world, that he was a fantasist.

14 Mr. Young is completely different. Mr. Young  
15 traveled thousands of miles to go fight. He now claims that he  
16 has PTSD. He has -- he talked about, you heard from Khalil,  
17 the plot to smuggle weapons into this courthouse, the plot --  
18 the plan to attack an FBI building, and the defense says, well,  
19 but he wasn't planning on doing it. He just talked about this  
20 stuff.

21 And that might be true. And that might be true. He  
22 might get -- some people might get the benefit of the doubt on  
23 that, but do you get the benefit of the doubt on that when you  
24 also have ten ballistic vests and 18,000 rounds of ammunition  
25 and 21 firearms and explosives, and you have PTSD?

1                   And the only time we know he was ever asked to help  
2 ISIS, he accepted. Maybe someone else would get the benefit of  
3 the doubt that, well, okay, yes, he's just speculating. When  
4 he talked about kidnapping and torturing an FBI agent, you  
5 know, that's just a bad sense of humor, but when it comes to  
6 figuring out the appropriate punishment for this defendant, he  
7 shouldn't get the benefit of the doubt.

8                   One of the reasons is, Judge, that even now, he has  
9 not been honest with the Court or the public or his friends.  
10 The first thing is the psychologist's report, the psychologist  
11 says that Mr. Young suffers from particular symptoms,  
12 including -- and he reported that he had these perceptual  
13 distortions and it might be PTSD, and when the psychologist  
14 asked him about his use of drugs, he said, "Well, yeah, I used  
15 illicit drugs to cope with insomnia and other psychiatric  
16 symptoms."

17                  We had evidence, and the Court said that it wasn't  
18 going to come into evidence for the trial, but that he's been  
19 using steroids since 2004, and the search of his house in 2016,  
20 we found steroid equipment. It happens to be that depression  
21 and suicidality are the most common long-term neuropsychiatric  
22 side effects of the use of -- long-term use of anabolic  
23 steroids. I have a peer-reviewed study that talks about that  
24 which I'll pass up to the Court. This is not something --

25                  THE COURT: Mr. Van Roekel?

1                   MR. KROMBERG: This is something that had it been  
2 mentioned to the psychologist, might have made a difference.  
3 Long-term use of steroids leads to paranoia, leads to  
4 depression, leads to insomnia.

5                   But even more than that, the Court has these letters,  
6 and it's awful what happens to Mr. Young's family as a result  
7 of Mr. Young. I mean, it's terrible, but what he told his  
8 family, he had his family submit letters based on lies.

9                   MR. SMITH: Objection.

10                  THE COURT: Mr. Smith, how many times have I told you  
11 you have to stand up when you speak to the Court? And this is  
12 a sentencing hearing. You'll be able to rebut anything that's  
13 said.

14                  MR. KROMBERG: Robert Rohrbach, Jr.'s letter to the  
15 Court: "I met the defendant in 2016. He told me the full  
16 story. The crime itself was him having compassion for a man  
17 who wanted to call his family and buy that man a phone card."

18                  The defendant's mother: "Finally, after doing  
19 nothing about Mo's request for Google Play cards, he started to  
20 receive e-mails from Mo pleading for them so he could call his  
21 family members. Only then did Nicholas finally purchase them."

22                  Geraldine Scalia: "He thought he was doing something  
23 helpful, enabling someone to call his sick parents."

24                  Philip Scalia: "He fell for Mo's sad story about a  
25 pregnant wife and poor mother."

1           Where could that story have come from? Because this  
2 is not a case where there's a confidential informant who tells  
3 one story and the defendant who tells another. This is, this  
4 is a case where every single communication between Mo and the  
5 defendant was written down and introduced into evidence, every  
6 single one.

7           MR. SMITH: Objection, Your Honor. There were  
8 actually many communications that were never produced by  
9 government, and there has been a suspicion of spoliation, which  
10 we can present to Your Honor, but --

11           THE COURT: No, we don't need to go into that.

12           MR. KROMBERG: The text -- the Threema text messages  
13 when Mo said, "Can you please send the gift cards?" was very  
14 clear. "We have lost a lot of fighters recently, and we need  
15 to bring in more, and we need Threema apps so we can  
16 communicate with them." That -- there was nothing about  
17 calling families, not a word, and the defense knows it.

18           And yet the defense even now submits letters from the  
19 family members saying, oh, this was about enabling Mo to call  
20 his family. That's cynical, and it's manipulative, and it  
21 means that the defendant has not accepted responsibility for  
22 his actions.

23           So, Judge, when the Court imposes sentence on the  
24 defendant, he should be punished for his obstruction of justice  
25 in December of 2015, trying to protect an ISIS fighter from

1 being found by the U.S. government; in November 2014 for trying  
2 to protect himself from being found for having helped the ISIS  
3 fighter; in February 2012 for trying to thwart an FBI  
4 investigation into an al Qaeda plot to bomb the U.S. Capitol;  
5 and in July 2016 for trying to send gift cards to ISIS so they  
6 can bring more fighters to ISIS.

7                 The defendant was a police officer, sworn to protect  
8 people in this community. He did the opposite, and he should  
9 be punished for it.

10                 Thank you, Your Honor.

11                 THE COURT: All right. Ms. Moreno?

12                 MS. MORENO: May it please the Court, Your Honor.

13                 THE COURT: Yes, ma'am.

14                 MS. MORENO: We're not here to relitigate the case.  
15 I wanted to make some general comments to the Court. I know  
16 this Court has read all the letters, including Mr. Young's  
17 letter, including every single motion that was filed, and paid  
18 close attention to the trial. The defense obviously has a  
19 different view of what happened and why Nicholas Young did what  
20 he did, and nonetheless, we stand convicted.

21                 I'm not going to get into a debate with the  
22 prosecutor about motives, but it is clear and the evidence was  
23 brought out that what he did was send gift cards to someone he  
24 thought was his friend. Of course, this was not true. And  
25 this was a misguided, one-sided friendship, and he made a

1 terrible mistake.

2                   And in the context of what was going on in the  
3 back-and-forth, if the Court remembers, Mo was talking about  
4 many things, including his pregnant wife, the death of children  
5 that he was seeing in the conflict, etc. This is context; this  
6 is not an excuse. And I think the Court has to look  
7 holistically at this.

8                   We do say that this was also borne out of Nick  
9 Young's source of loneliness and connecting to another guy with  
10 a history and experience and love of the military.

11                  Who is Nick Young, Your Honor? And that's who we  
12 would like you to focus on in this case. You can see part of  
13 it through his own letter, which we believe -- I will tell you  
14 as a defense lawyer who's been doing this for a long time, I  
15 thought it was one of the best letters I've read, the most  
16 sincere. He -- it's contrite. It's a recognition of the lack  
17 of good judgment. It's a confession of his shame. It tries to  
18 give context to what he did, and it tells the Court he hopes  
19 that there is hope after this sentencing. And it also asserts,  
20 I think most importantly, his love for this country, no matter  
21 what the government can argue.

22                  Judge, this is not a typical terrorism case where we  
23 see around the United States the facts of defendants talking  
24 about their hatred of America, their encouraging violence  
25 against American citizens. You know, some of this, I believe,

1 could rise to the level of criticism of foreign policies on  
2 which we all disagree. Some of the language certainly was  
3 rhetoric, provocative, inflammatory, but given who Nick Young  
4 was for the last almost four decades, his involvement in school  
5 in the ROTC program, I, I think that there's no question that  
6 when Nick Young says that he loves his country, that we should  
7 believe him, and that when he says he made a terrible mistake  
8 and he is willing to pay for that mistake, we should believe  
9 him, too.

10 Sufficient but not greater than. So he's lost a lot  
11 already. He acknowledges that in his letter, Your Honor. The  
12 question is how long -- how much longer in prison is sufficient  
13 but not greater, but not greater than.

14 We can also glean who Nick was from the character  
15 letters that were submitted on his behalf, letters of enduring  
16 lifetime friendships, not people who met him 5 years ago but 25  
17 years ago, 30 years ago, his elementary school principal, law  
18 enforcement officers who thankfully at this point came forward  
19 and told the Court what he was really like on the job.

20 And, Judge, he shouldn't be sentenced and punished  
21 because he was a law enforcement officer. He served with  
22 distinction for ten years before he made this terrible mistake.  
23 We say to the Court you should take that into consideration and  
24 credit him for that.

25 Representing Nick Young for me has been a privilege.

1 Since Dr. Al-Arian's case 15 years ago, I've done a lot of  
2 these cases around the country and consulted on numerous  
3 terrorism cases here and the United Kingdom, and Nick stands  
4 out, Judge. He stands out to me as a client. I'm not going to  
5 relitigate all the things that are not in this case that we see  
6 in all these other cases that I've personally seen as a defense  
7 lawyer: no real connection to a foreign terrorist  
8 organization, traveling to fight not for a terrorist  
9 organization, which is the insinuation for -- by the  
10 government.

11                   He doesn't fit the profile, Judge. He doesn't fit  
12 the profile that we too often see.

13                   And I will say this: Reading the government's  
14 sentencing brief was a bit troubling to me because I will  
15 assert to the Court that in conversations I had with learned  
16 counsel across the table when we talked about this case, that  
17 Mr. Kromberg actually made the comment that he thought it was a  
18 two-year sentencing case. That was at a certain point in the  
19 case, but I thought it was interesting to me that that comment  
20 was made at a time when he knew all the worst facts about  
21 Nicholas Young, all the case history much better than I did  
22 because I was brought in late to the case, as the Court well  
23 knows.

24                   So when I read the government's sentencing brief, I  
25 thought, well, I don't know, they're not asking for a

1       particular number, but they're sort of leaving, leaving it out  
2       there that the Court should just throw away the key on Nick  
3       Young. That's exactly what Your Honor should not do.

4                 Not even the PSR assigns a significant value to a  
5       betrayal of trust in terms of the fact that he was a law  
6       enforcement officer and perhaps violated his, his mandate,  
7       which he didn't do, Judge. We say he didn't do that.

8                 "Wisdom comes alone through suffering," Aeschylus.  
9       Mr. Young has suffered. He will continue to suffer his whole  
10      life. We ask that it not be greater but just sufficient, and  
11      we ask for a significant downward variance. Thank you.

12               THE COURT: All right. Mr. Young, come up to the  
13      lectern. This is your chance to say anything you would like  
14      the Court to consider. I have read your letter several times,  
15      but obviously, you have a right to say anything else you'd like  
16      the Court to consider.

17               THE DEFENDANT: Yes, Your Honor. I'll keep this  
18      short. You know, the prosecution's brought up quite a few  
19      times about the amount of body armor I had in my house. All  
20      but one of those pieces was purchased after they had already  
21      expired, after they had already expired. The dates that are on  
22      them are from, like, the mid-'90s. It's -- they just don't  
23      have the same use, you know, being so old. You know, it's for  
24      collector's value.

25               The important thing I'd like to say is that when I

1 declined the government's offer to spy on other Muslims in the  
2 mosque, I had offered them services that I thought were more  
3 important than that. They declined. That's in their  
4 paperwork. And it would have been at significant risk to  
5 myself, and I was never contacted about that again after I made  
6 the offer.

7 All I'd like to say now is I'm very sorry for letting  
8 my friends down, letting my family down. Those people in my  
9 life deserved better from me, and they'll get better from me.

10 That's all, Your Honor.

11 THE COURT: All right. Well, Mr. Young, you present  
12 a very difficult case for the Court because on the one hand,  
13 you strike everybody as a very mild-mannered person. You've  
14 represented yourself as a patriot, that you've been devoted to  
15 the United States, and that you are not a risk.

16 The problem the Court has is, you know, we can't look  
17 inside a human being and really judge what is true. As I told  
18 the jury at the end of the trial, it's never easy sitting in  
19 judgment of another human being, but that's what some of us  
20 have to do, and so I have to look at the evidence before me,  
21 and I have to draw what would be considered in my view  
22 reasonable inferences from that evidence, and one of the -- two  
23 of the main concerns in sentencing is -- are deterrence. We  
24 want to deter an individual from reengaging in the criminal  
25 activity and also send messages to others who might be thinking

1 about engaging in such activity.

2           But if you think about why do we worry about  
3 deterrence, we worry about deterrence because we're concerned  
4 about protecting the community from future similar criminal  
5 conduct. Your case is particularly troublesome because we not  
6 only have the specific crimes for which you were convicted, but  
7 there's this other additional evidence that strikes the Court  
8 as indicating that there is a real danger from someone like  
9 yourself.

10           The amount of weaponry and armament you had in your  
11 home differentiates your case from that of Qamar, for example.  
12 The number of firearms, 18,000 rounds of ammunition, 60  
13 knife-type instruments, some of which were of polymer, which  
14 means they could get by a lot of metal detectors, and those  
15 were not one-inch pocket knives, the fact that you had  
16 grenade-related and explosive-related items in your home,  
17 videos on how to make a bomb, that kind of stuff is very, very  
18 troubling to the Court.

19           When you combine that type of weaponry in your home,  
20 whether you're calling it for collecting purposes or not, I  
21 still have to look at that as real. Then we have the issue of  
22 now mental health, which, of course, can be a very dangerous  
23 component when combined with weaponry.

24           We have the uncontested evidence that you were a  
25 consumer of very violent videos. The government submitted

1 several of those pieces of evidence. You had bookmarked ISIS  
2 videos assassinating people, and then we have the rhetoric.  
3 Whether it was meant in jest, whether it was not intended to be  
4 real, we still have your own words both in e-mail messages and  
5 then through the testimony of Khalil and Mo.

6 You definitely had animosity towards the FBI. Now,  
7 the FBI is not equivalent to the United States of America, but  
8 many people consider it, you know, our bastion federal law  
9 enforcement agency, and that anti-FBI animus coupled with these  
10 other factors is another indicator that someone may, in fact,  
11 be posing a real threat.

12 All of these things combined, plus, unlike many of  
13 these cases we have involving material support where the  
14 government has been involved, you did take two trips to Libya.  
15 And, you know, it's interesting that during the trial, you  
16 know, you introduced photographs that made it look like it was  
17 almost like a tourism visit, but your psychologist now, as the  
18 government pointed out, says you may have posttraumatic stress  
19 syndrome from what you experienced in Libya.

20 All that goes into the mix that the Court has to  
21 consider in determining what is the appropriate sentence here,  
22 and having considered those various factors, I'm satisfied, and  
23 it's still going to be a variant sentence, that a sentence of  
24 180 months in the custody of the Bureau of Prisons, with credit  
25 for time served, to be imposed concurrently on Counts 1, 2, and

1       4, is sufficient but not greater than necessary to achieve the  
2 purposes of 3553(a).

3                  When you've finished the 180-month sentence, you'll  
4 serve fifteen years of supervised release on Count 1 and three  
5 years of supervised release on Counts 2 and 4. The supervised  
6 release on Counts 2 and 4 is concurrent with each other and  
7 concurrent with the 15 years on Count 1.

8                  Now, in terms of the conditions of supervision, you  
9 must first of all be of uniform good behavior, which means you  
10 cannot violate any federal, state, or local laws. Do you  
11 understand that?

12                 THE DEFENDANT: Yes, Your Honor.

13                 THE COURT: Secondly, you have to follow all the  
14 conditions of supervision, which will be printed on the  
15 judgment order and explained to you by the Probation Office.  
16 Do you understand that?

17                 THE DEFENDANT: Yes, Your Honor.

18                 THE COURT: As additional and special conditions of  
19 supervision, you are first of all required to submit to such  
20 drug testing, because you must be drug free, so you'll have to  
21 submit to such drug testing and such in- or outpatient drug  
22 treatment as directed by the Probation Office. You'll be  
23 required to pay the costs for the testing and treatment to the  
24 extent that you are able, and you will have to waive any  
25 privacy rights that you have to the drug testing program so the

1 Probation Office can monitor your compliance.

2 Do you understand that?

3 THE DEFENDANT: Yes, Your Honor.

4 THE COURT: Secondly, you must satisfactorily  
5 participate in such mental health evaluation and treatment,  
6 including the taking of any medication or any in- or outpatient  
7 treatment, as directed by the Probation Office.

8 Do you understand that?

9 THE DEFENDANT: Yes, Your Honor.

10 THE COURT: Again, you'll be required to pay the  
11 costs to the extent you are able, and you will have to waive  
12 any privacy rights that you have so that the Probation Office  
13 can monitor your progress. Do you understand that?

14 THE DEFENDANT: Yes, Your Honor.

15 THE COURT: You are barred from having any  
16 communications whatsoever, and that means in person, by  
17 telephone, e-mail, etc., with any known terrorists or terrorist  
18 organizations. Do you understand that?

19 THE DEFENDANT: Yes, Your Honor.

20 THE COURT: And lastly, you'll have to comply with  
21 the requirements of the computer monitoring program of the  
22 Probation Office, and you will have to consent to the  
23 installation of computer monitoring software on any software --  
24 any computer to which you have access, and that will be  
25 performed by a Probation Office, and there will be restrictions

1       on what you can do on your computer. There will be a notice  
2       placed on the computer at the time of installation to warn  
3       others of the existence of the monitoring software, and you'll  
4       have to notify others of the software monitoring.

5                  Do you understand that?

6                  THE DEFENDANT: Yes, Your Honor.

7                  THE COURT: And you'll not be able to remove or  
8       tamper with that in any respect.

9                  The Court finds based upon your financial situation  
10       that you don't have the costs for incarceration, any other  
11       costs of supervision, or the statutory fines. However, there  
12       are \$300 of special assessments that must be made.

13                  Do you understand that?

14                  THE DEFENDANT: Yes, Your Honor.

15                  THE COURT: Was there any forfeiture in this case,  
16       Mr. Kromberg?

17                  MR. KROMBERG: There was not, Your Honor.

18                  THE COURT: All right. Now, because you pled not  
19       guilty and went to trial, you have a right to appeal both your  
20       convictions and your sentence. If you plan to file an appeal,  
21       such appeal must be noticed within 14 days of today's date.

22                  You have the right to be represented by counsel  
23       during your appeal. If you are unable to afford appellate  
24       counsel, you'll need to apply to the Court of Appeals, the  
25       Fourth Circuit, to have counsel appointed for you, and they

1 will appoint counsel for you.

2 Do you understand?

3 THE DEFENDANT: Yes, Your Honor.

4 THE COURT: Now, was there any request in terms of a  
5 recommendation for a facility?

6 MR. SMITH: Your Honor, we would -- we were about to  
7 ask for a prison camp in Virginia --

8 THE COURT: Well, I'm not going to put a camp for  
9 this type of an offense. I will recommend a facility as close  
10 to this area as possible, all right?

11 MR. SMITH: We would request a minimum security  
12 facility.

13 THE COURT: I will recommend to the Bureau of Prisons  
14 a facility as close to this area as possible.

15 MR. SMITH: Thank you.

16 THE COURT: It's up to the Bureau of Prisons to make  
17 those decisions.

18 Was there anything further from the United States?

19 MR. KROMBERG: Judge, in the condition of supervised  
20 release, could the defendant be required to notify the  
21 probation officer if he's going to possess more than personal  
22 use quantities of body armor or cutting instruments? Because  
23 it just seems that 70 pieces of body armor is not necessary for  
24 someone on supervised release, but maybe he has a right to  
25 something, but not enough to --

1                   THE COURT: Well, all right. I mean, obviously, the  
2 law now is he cannot possess any firearms.

3                   MR. KROMBERG: Or ammunition.

4                   THE COURT: I'm going to add weapons or any weapons  
5 of destruction or any significant knives. I mean, you know,  
6 you can cook but some of these knives.

7                   MR. KROMBERG: And I think the body armor may be more  
8 troubling than the -- than even some of the knives, Judge.

9                   THE COURT: I can't see any reason for body armor.  
10 I'll include that, yes.

11                  All right, anything further?

12                  (No response.)

13                  THE COURT: The defendant is remanded. Thank you.

14                  MR. KROMBERG: Thank you, Your Honor.

15                  (Which were all the proceedings  
16                  had at this time.)

17  
18                  CERTIFICATE OF THE REPORTER

19                  I certify that the foregoing is a correct transcript of  
20 the record of proceedings in the above-entitled matter.

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Anneliese J. Thomson

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